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**RULE PROPOSAL
HEALTH AND SENIOR SERVICES
DIVISION OF SENIOR BENEFITS AND UTILIZATION MANAGEMENT**

**Long Term Care Services
Reimbursement of Nursing Facility Services by the Medicaid Program**

Proposed Amendments: N.J.A.C. 10:63-1.2 and 3.9

Authorized By: Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior Services.

Authority: N.J.S.A. 30:4D-6a(4)(a) and b(14); 30:4D-7, 7a, b and c; 30:4D- 12; 30:4D-6.7 and 6.8; 42 U.S.C. § 1396a(a)(13)(A); 42 U.S.C. § 139 6r; and Executive Reorganization Plan 001-1996.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2003-38.

Submit written comments by March 22, 2003 to:

Kathleen Mason, Assistant Commissioner
Division of Senior Benefits and Utilization Management
Department of Health and Senior Services
PO Box 715
Trenton, NJ 08625-0715
Fax 1 (609) 631-4667

A copy of the proposal is available for review at all offices of the Area Agencies on Aging, which are situated in all 21 counties.

The agency proposal follows:

Summary

Responsibility for the Title XIX (Medicaid) nursing facility program was transferred from the Department of Human Services, Division of Medical Assistance and Health Services to the Department of Health and Senior Services pursuant to Executive Reorganization Plan No. 001-1996.

The Department of Health and Senior Services (Department or DHSS) is proposing amendments to the rules at N.J.A.C. 10:63, Long Term Care Services, which address the reimbursement of nursing facility services by the Medicaid program. Nursing facility reimbursement is governed by the Social Security Act, which requires that the methodologies underlying the establishment of the reimbursement rates, and the justification for the proposed rates, be subject to a public process, which includes review and comment. (See 42 U.S.C. § 1396a(a)(13).) This notice of proposal is intended to satisfy the statutory requirement.

The following identifies the specific amendments that are being proposed herein:

N.J.A.C. 10:63-1.2 Definitions

The definition for "Department of Health" is amended to reflect the current agency name, Department of Health and Senior Services.

N.J.A.C. 10:63-3.9 Routine patient care expenses

Nursing facilities (NFs) are required to report clinical data regarding the number of patients that receive additional nursing services for specific conditions or acuities. This clinical data is included in the reimbursement methodology used to calculate per diem rates of reimbursement. Currently, NFs report the number of clients that received additional nursing services based on patient acuities for Medicaid and non-Medicaid patients on the TAD (Turn Around Document) that they submit to the fiscal agent (Unisys). Patients billed as Medicaid on the TAD are sometimes incorrectly dropped from the case mix patient classification total if, for example, a question of eligibility should arise and the case is pending. As a result, the Department receives numerous appeals. The Department is proposing to use the acuity totals reported on cost reports for the calculation of the minimum nursing requirements rather than acuities reported on the TAD.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

At the present time, there are approximately 321 nursing facilities providing services on a monthly basis to approximately 31,000 Medicaid beneficiaries in New Jersey. As the proposed amendments are technical, procedural, and terminological in nature, there will be no social impact on the Department, nursing facilities or the Medicaid beneficiaries being served.

Economic Impact

The amendments are technical, procedural, and terminological in nature. These changes will have no major fiscal impact.

The amendment regarding routine patient care replaces the source of reporting clinical data from the records of the fiscal intermediary to the records of the facility. Since the facility data will now more accurately match the costs reported with the clinical conditions of patients, the proposed amendment will eliminate disputes or appeals and, consequently, reduce the administrative costs of filing and processing appeals.

Federal Standards Statement

These proposed amendments do not impose requirements in excess of Federal requirements in 42 U.S.C. § 1396a(a)(13); hence, a Federal standards analysis is not required.

Nursing facility reimbursement is governed by Federal law which requires that the methodologies underlying the establishment of the rates, and justification for the proposed rates, be published so as to allow providers, beneficiaries, their representatives, and other concerned State residents the opportunity to comment. This notice of proposal is intended to satisfy the statutory requirement. 42 U.S.C. § 1396a(a)(13)(A).

Jobs Impact

The proposed amendments would not alter nursing facility rules regarding staffing. There will be no overall gain or loss of jobs in the State as a result of adoption of these amendments.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

Although some of New Jersey's nursing facilities represent small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the nature of the proposed amendments suggests no reason or need for differentiation on the basis of business size. At the present time,

providers are required by law to maintain records sufficient to fully document the name of the resident being treated, dates and nature of services, etc. (see N.J.S.A. 30:4D-12). These documentation requirements include the preparation and submission of cost reports to the State, which are subsequently used as a basis for establishing a nursing facility's per diem rate of reimbursement. The reporting procedures are identical for all facilities. These amendments would create a minor change in the reporting process. Acuity information that had been previously reported on the fiscal agent billing document would now be reported on the Cost Report. Nursing facilities would not have to employ professional services in order to comply.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows: (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

NJ ADC 10:63-1.2

10:63-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Department of Health **and Senior Services**" [(DOH)] **(Department)** means the New Jersey State Department of Health **and Senior Services**.

NJ AC 10:63-3.9

10:63-3.9 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services ([RN's, LPN's]- **RNs, LPNs+** and other) will be established as follows:

1. The minimum nursing requirements in terms of hours worked will be calculated for each Class I and Class II NF based upon [the case mix patient classification (see N.J.A.C. 10:63-3.9(b)1ii(2) and standards in effect during the base period. Minimum nursing requirements in terms of hours shall be calculated for each NF based upon]:

i. The number of patient days **reported on the cost report** during the base period.

[ii. The base period patient mix related to additional nursing services requiring additional minimum nursing time as derived from patient counts reported by each facility to the Medicaid fiscal agent:-

(1) Patients with conditions requiring additional nursing services will be reported by means of the billing turnaround document (TAD) for Medicaid recipients, and the Medicaid billing certification document for non-Medicaid patients. If a facility fails to report a condition requiring additional nursing services on the original TAD or billing certification document, the count will not be used in the facility's rate calculation. -

(2) Facilities will report patients with conditions requiring additional nursing services if a patient: resided in the facility and had the condition(s) for the entire month; resided in the facility for the entire month and developed the condition(s) during that month; or entered the facility and had the condition(s) for some portion of the month. This count shall include patients who develop condition(s) during a month or enter the facility with condition(s) and cease to have this condition, are discharged, or die during the same month. No reporting shall be made for a patient who ceased to have the condition(s), died or left the facility during a month (other than the month of admission or onset of the condition(s)), except for a patient who was on a bed hold leave to an acute care hospital and returned to the facility.

[iii. The State Department of Health minimum nurse staffing standards, according to N.J.A.C. 8:39-25.]

ii. The minimum nurse staffing standards of 2.5 hours per day in accordance with N.J.A.C. 8:39-25 during the base period; and

iii. The total number of residents reported on the cost report that were receiving additional nursing services based on the following acuities during the base period:

Tracheostomy	1.25 hours/day
Use of respirator	1.25 hours/day
Head trauma stimulation/advanced neuromuscular/orthopedic care	1.50 hours/day
Intravenous therapy	1.50 hours/day

Wound care	0.75 hour/day
Oxygen therapy	0.75 hour/day
Nasogastric tube feedings and/or gastrostomy	1.00 hour/day

(1) The month of onset of additional nursing services should be counted as one full month, whether the services are continued or discontinued before the end of the month. After the first month, count the patient only if the additional services are being provided at the end of the next month. If the need for additional nursing services ceases during the month following the month of onset, that month is not counted. However, as stated above, the month of onset is counted as one full month.

(2) If the patient, who requires additional nursing services, dies in the same month as the onset of the services, the patient is counted.

(3) Count the patient requiring additional nursing services if they are on 10-day bed hold or therapeutic leave at the end of the calendar month as though they are still in the facility. If the patient requiring additional nursing services is on bed hold or therapeutic leave in one calendar month and it extends into the following month, and the patient either does not return to the same facility or goes beyond the bed hold allowance through that following month, the additional nursing services are not counted in that following month. When the same patient requiring additional services returns to the same facility or another facility, the additional nursing services are counted in the readmission/admission calendar month, provided the need for additional nursing services persists through that calendar month; and

iv. (No change.)

2.-7. (No change.)

(c)-(e) (No change.)

(f) Where actual base period costs for routine patient care are below the limits established, the actual costs will be included in the rate base. The Department of Health **and Senior Services**, [Health Facilities Inspection] **Long Term Care Assessment and Survey as authorized at N.J.A.C. 8:39**, will be notified of all cases where [a] NF patient care costs per day are less than 75 percent of the **respective** limit [s] in N.J.A.C. 10:63-[3.8(b)6] **3.5 and 3.9** and [of all cases] **in each case** where nursing hours worked appear to be below **the** State standards.